

**Speech-Language Pathology and Audiology Board**

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**STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY BOARD
STRUCTURAL PEST CONTROL BOARD
CONFERENCE ROOM
1418 HOWE AVENUE, SUITE 18
SACRAMENTO, CA 95825
(916) 263-2666
MEETING MINUTES**

**APRIL 24, 2003
SPEECH-LANGUAGE PATHOLOGY PRACTICE COMMITTEE
MEETING MINUTES**

Committee Members Present

James Till, PhD, Chairperson
Bruce Gerratt, PhD
Sherry Washington, MA
Paul Donald, MD

Staff Present

Annemarie Del Mugnaio, Executive Officer
Candace Raney, Staff Analyst
Lori Pinson, Staff Analyst
George Ritter, Staff Counsel

Committee Members Absent

Vivian Shannon, MA

Board Members Present

Alison Grimes, AuD
Marcia Raggio, PhD
Rebecca Binge, MA

Guests Present

Lisa O'Connor, California Speech-Language-Hearing Association
Robert Powell, California Speech-Language-Hearing Association

I. Call to Order

Chairperson Till called the meeting to order at 5:00 p.m.

II. Introductions

Those present introduced themselves.

III. Discussion of Developing Comments to the California Board of Occupational Therapy's proposed regulations regarding "Swallowing Assessment, Evaluation, or Intervention."

Mr. Till introduced the discussion item and referenced the Board of Occupational Therapy's (BOT) proposed regulation materials in the meeting packets.

Ms. Del Mugnaio informed the Committee that the BOT filed the proposed regulations with the Office of Administrative Law and that the publication date was April 25, 2003. She further stated that the public comment period was 45 days ending on June 10, 2003.

Ms. Del Mugnaio expressed concern regarding the BOT's lack of consultation with the Board to develop the final regulation language. She stated that she contacted Gretchen Kjose, the BOT Executive Officer, to discuss the status of the regulations and to express her concerns. She informed the Board that Ms. Kjose stated that since the BOT held several Regulatory Committee Meetings where the agencies specified in the enabling law were invited and where representatives of those agencies provided comments, the BOT did consider the agencies' comments when drafting the regulations for advanced practices. Ms. Del Mugnaio explained that one representative of the Board did not constitute the position of the full body and that official Board comments must be developed by the Board during a public meeting. She further stated that the BOT did not forward a proposal to the Board for consideration or comment. Ms. Del Mugnaio stated that Ms. Kjose informed her that the Board should submit their formal comments during the public comment period. Ms. Del Mugnaio explained that the comments from the agencies named in the enabling law hold a significant weight and should be responded to separate from the general public comments.

Ms. Washington echoed Ms. Del Mugnaio's concerns regarding the full Board's involvement in the final regulations. She explained that her understanding of her role in attending the BOT Regulatory Committee meetings was to serve as a liaison of this Board and provide technical assistance on speech-language pathology practice issues. She stated that she never represented to the BOT that she was speaking on behalf of the Board.

Mr. Till inquired whether the BOT could discontinue with the regulation proposal should the Board request that they withdraw the regulations in order to consult with our Board on significant consumer protection issues that exist in the current proposal.

Mr. Ritter confirmed that the BOT has the option to withdraw the regulations at any time during the process.

Ms. Lisa O'Connor indicated that she and other members of the California Speech-Language-Hearing Association also attended the BOT Regulatory Committee meetings in January or February 2002, and expressed strong concerns over the lack of education and training in swallowing that is available to occupational therapists (OTs) in their respective training programs. She further stated that she impressed upon the BOT that OTs are not educated in anatomy and physiology and are not prepared to participate in basic swallowing treatments let alone instrumental diagnostics. She stated that the BOT

disregarded the comments of the speech-language pathology professionals present at the committee meetings as the regulations do not reflect their input. Ms. O'Connor referenced a letter written by Rebecca Leonard, speech-language pathologist, and stated that Ms. Leonard included all of the points of concern that had been stated verbally to the BOT at the committee meetings.

Ms. Washington stated that she is familiar with the issues surrounding OTs and swallowing treatments as she was confronted with the issue at Cedars-Sinai Medical Center where there is a joint program of OTs and SLPs. Ms. Washington indicated that historically the majority of the OTs in California were involved in pediatric feeding and swallowing, where feeding and swallowing are assessed together, and proper handling is critical. She explained that while OTs are trained to work with neonates and infants in the capacity of feeding, it does not imply that OTs are trained to deal with swallowing disorders.

Mr. Ritter inquired whether the committee felt that the regulations expand the scope of practice for OT, which is outside the BOT's authority.

Ms. Washington indicated that she conducted a national study on OT practice issues for Cedars and found that OTs had limited or no academic training in swallowing and that all of their clinical training is on-the-job. She further stated that the recognition of OTs and swallowing was brought about after the American Occupational Therapy Association (AOTA) decided that swallowing should be included in the OT scope of practice as an extension of feeding. She reported that the only position statement regarding OTs and swallowing was published recently by the AOTA and was modeled after the American Speech-Language-Hearing Association's (ASHA) guidelines. She stated that the position paper supports the fact that OTs obtain most of their training in swallowing from speech-language pathology continuing education courses or on-the-job training with SLPs. She also stated that the national position paper focused on diagnostics and had very little information on treatment. Ms. Washington stated that because there is a shortage of SLPs, and the AOTA has deemed that swallowing is within the scope of practice of occupational therapy, absent state licensure, many facilities are applying competencies as a standard for OTs to participate in swallowing procedures.

Mr. Gerratt stated that the regulations are inadequate as they do not specifically define the education and training required to achieve specialty certification. He further stated that the fundamental information is critical when dealing with patients with altered structures following surgery. He suggested that without the understanding of normal anatomical structures, it is impossible for a practitioner to safely treat a patient with altered structures.

Ms. Washington provided examples of where an OT's lack of knowledge in available swallowing strategies and treatments can lead to improper diagnosis or ineffective therapy.

Ms. Washington stated that in order for OTs to make functional assessments about swallowing they must understand the anatomy and physiology. She stated that since this coursework is not available during their academic training, OTs obtain the information

through continuing education workshops taught mostly by SLPs. Conversely, SLPs typically spend a quarter or a semester in their training programs studying the normal swallow physiology.

Ms. Washington stated that OTs can learn the perfunctory steps to performing swallowing procedures through on-the-job training, however, the regulations are not sufficient in defining specific content areas that should be covered by the OT.

Mr. Till outlined the major issues that should be conveyed in a letter to the BOT. First, there has been a lack of full consultation with the Boars as required by the enabling law. Even though some input was provided during the BOT committee meetings, the proposed regulations do not reflect that input. Also, the 45 day comment period, within which the Board must respond to the proposal, is not enough time for the Board to thoroughly review and address all of the issues with the proposed regulations. The second main point is that there are scope of practice issues. The third and most critical issue is that the regulations do not adequately protect the consumer due to the lack of specificity in the advanced practice training requirements.

Ms. Washington stated that the regulations are currently formulated with instrumental procedures categorized as the advanced procedure for swallowing. She explained that in actuality the non-instrumental procedures can be more risky because the practitioner does not have the ability to view the internal structures during the procedure. She stated that this may have been an attempt by the BOT to eliminate the need for two separate advanced practice certificates in swallowing.

The Committee discussed the fact that some SLP university training programs that do not offer in depth course work in swallowing and how that may impact the Board's credibility when making the argument that OTs do not have the theoretical background to provide competent treatment in the area of swallowing.

Ms. Washington stated that she was unaware of SLP training programs that do not offer some course work in the area of swallowing. She further stated that swallowing is within the scope of practice of an SLP and is supported by validation studies conducted by the Board and ASHA.

Ms. Del Mugnaio stated that the inclusion of swallowing in the SLP scope of practice is further supported by the fact that SLPs are examined on their knowledge of swallowing on the national examination required for licensure.

Ms. Del Mugnaio proposed that, given the Board's concerns with the proposed regulations and the restrictive timing allotted in the public comment period, the Board could develop a letter to the BOT which would request that the BOT withdraw the regulations and work with the Board on appropriate amendments.

Mr. Ritter suggested that the Board copy the Office of Administrative Law and the Department of Consumer Affairs on the letter.

Mr. Till adjourned the meeting at 5:45 p.m. to be continued the following morning April 25, 2003 at 9:00 a.m.

Mr. Till reconvened the meeting on April 25, 2003 at 9:19 a.m.

Mr. Till summarized the discussions of the previous day.

Ms. Del Mugnaio provided a verbal summary of the components that should be included in the letter to the BOT wherein the Board would request the BOT to withdraw the advanced practice regulations on "Swallowing Assessment, Evaluation, or Intervention."

Mr. Donald questioned the BOT's process of developing regulations for procedures that are recognized as a function of an OT. He further inquired about the examination requirements for an OT to be licensed in the state.

Ms. Del Mugnaio recapped the Committee's discussion of the previous evening and indicated that the enabling law provided for the BOT to develop advanced practice regulations which would include specialty areas of OT including swallowing. She further stated that the development of the advanced practice regulations is preceding an occupational analysis or an examination validation study which would identify and support the OT's scope of responsibility based on knowledge and skill sets.

Mr. Ritter stated that pursuant to Business and Professions Code Section 139, the BOT is responsible for conducting an examination validation study of the examination required for licensure.

M/S/C: Washington/Gerratt

The Committee voted to recommend to the Board that the Executive Officer work with the Committee to draft a letter to the BOT reflecting the Board's concerns with the advanced practice regulations on "Swallowing Assessment, Evaluation, or Intervention" wherein the Board will request the BOT to withdraw the regulations from the state regulatory process and collaborate with the Board on the negotiated amendments.

IV. Discussion of Speech-Language Pathologist's Role in Performing Modified Barium Swallows

Mr. Till introduced the discussion of the speech-language pathologist's role in modified barium swallows (MBS) and requested that Ms. Del Mugnaio provide the background history relative to the issues that have been brought before the Board.

Ms. Del Mugnaio stated that periodically the office receives telephone calls, predominately from hospitals and some individual speech-language pathologists, inquiring whether it is within a speech-language pathologist's scope of practice to conduct and interpret a MBS. She stated that she, legal counsel for the Board, and attorneys representing the Medical Board observed the procedure conducted on an infant and an adult to understand the components of the study. The attorneys opined that, provided a radiologist or a radiology technician operated the radiological equipment, and that the

study was conducted upon referral of a physician who would review the recommendation prepared by the speech-language pathologist, the speech-language pathologist was not violating scope of practice provisions by conducting the procedure. After consulting with the professionals involved in conducting MBS studies, legal counsel recognized that video taping the study for further review by a radiologist was standard procedure.

Ms. Del Mugnaio stated that one question that seemed to surface repeatedly was whether it was legal to dispense barium sulfate without a prescription.

Ms. Washington stated that in her experience most of the confusion surrounding the MBS study was with respect to whether the radiologist must be present in the room during the procedure versus the SLP performing the study independently and video taping the study for review by a radiologist at a later date.

Mr. Donald stated that from a medical standpoint there should be no objection to the speech-language pathologist administering the barium, assessing the swallowing activities, and providing a recommendation to the referring physician. He further stated that the procedure is definitely non-invasive.

Mr. Ritter stated that, since swallowing is provided for in the general practice provisions for speech-language pathology, there should not be a legal issue.

The Committee accepted the prior opinion formulated by legal counsel which concluded that a speech-language pathologist may conduct a MBS study in conjunction with specified medical personnel.

There being no further discussion, Chairperson Till adjourned the meeting at 10:00 a.m.

Annemarie Del Mugnaio, Executive Officer